

FUNDAMENTAL RIGHTS, REASONABLE
PLURALISM, AND THE MORAL
COMMITMENTS OF LIBERALISM

Clark Wolf

1. Liberalism and Fundamental Constitutional Rights

Virtually all liberal theories incorporate a version of fundamental rights constitutionalism, the view that the scope of democratic rule must be radically limited where its exercise would compromise vital liberties (Murphy 1995, 78). In fact, the view that some rights deserve constitutional protection from the democratic process is sometimes regarded as the essential identifying feature that distinguishes liberal theories as *liberal*. In this spirit, Allen Buchanan writes:

The liberal political thesis, as I define it, is the thesis that the state should enforce certain basic civil and individual rights and liberties—roughly speaking, those which are found in the U.S. Constitution's Bill of Rights, and in John Rawls's first principle of justice. These rights include rights to freedom of religion, expression, thought, and association, the right of political participation, and the right of due process. This first thesis is closely related to, and may be argued to imply another thesis that is also associated with liberalism, namely that the proper role of the state is to protect basic individual liberties, not to make its citizens virtuous or to impose upon them any particular or substantive conception of the good life. The connection between these theses should be clear: if the state enforces the basic civil and political liberties, it will leave individuals free, within broad limits, to pursue their own conceptions of the good and will preclude itself from imposing upon them any one particular conception of the good or of virtue. (Buchanan 1989, 854)

But while many liberals will agree on the claim that fundamental rights deserve special constitutional protection, different liberal theories give different accounts of the origin or justification of these rights, and not all such theories regard the same rights as having the fundamental importance that justifies special constitutional protection. Both in Rawls's early work and in

his more recent papers, the fundamental rights are given a key role in the theory of justice. Rawls's first principle of justice stipulates, "Each person is to have an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme of liberties for all" (Rawls 1993, 291). Rawls argues that this principle has lexical priority over other elements of the conception of justice as fairness, including the principles guaranteeing equal opportunity and defining the limits of distributive inequalities. Rawls also emphasizes the fundamental liberties as the first elements in his list of primary goods—goods that are to be understood as all-purpose means needed by all rational people regardless of any of their other wants or values.

In this chapter, I examine the basis for Rawls's theory of fundamental rights and its role in *Political Liberalism*. I argue that Rawls's account of these rights has changed in important ways from his early work in *A Theory of Justice* to his later work in *Political Liberalism* and recent papers. But the core of Rawls's argument for the value and identification of these rights remains unchanged: Rawls views the fundamental rights as those rights that are necessary for the exercise of basic human capacities, which he calls "the two moral powers." It is because the fundamental rights are necessary conditions for the exercise of these fundamental capacities that these rights are taken to reflect "the higher-order interests" of all rational persons. This stable core in Rawls's account of fundamental rights leaves his argument open to some persistent problems. I argue that these problems do not constitute conclusive objections to Rawls's project but that an understanding of them should lead us to modify our acceptance of Rawls's larger project, and to qualify acceptance of the account of political legitimacy Rawls offers in his recent work. Such an understanding may also help to explain the transition from Rawls's earlier work in *A Theory of Justice* to his later work in *Political Liberalism*. Even more important than this exegetical objective, an examination of Rawls's arguments will, I hope, help in the articulation of a modest but plausible understanding of the nature and limits of fundamental constitutional rights.

2. Rawls on Rational Revisability and Fundamental Liberal Rights

Rawls's argument for the fundamental liberal rights, the content of his first principle of justice, has been the focus of much less scholarly attention than other features of his view. It is not difficult to see why this should be so: Liberal theorists are more in agreement about the fundamental rights than they are about distributive and redistributive aspects of the theory of justice. The difference principle and its implications for the structure of basic social institutions are the source of most of the interesting conflict between Rawls and his libertarian critics. The original position justification of the difference principle has been similarly controversial: Rawls's argument for the claim that parties to the original position should employ maximin reasoning in their choice among conceptions of justice is widely regarded as perhaps the

single worst argument in *Theory*. Those who find Rawls's project attractive have found it necessary either to find some alternate supporting argument for the difference principle or to articulate an alternate and less controversial principle of distributive justice.

It is fair to say that the distributive features of Rawls's conception of justice have been at the center of attention both from Rawls's critics and his supporters and that this flurry of activity has overshadowed the argument for the basic liberal rights. But if this imbalance of critical attention is due to a mistaken belief that liberals can all agree about the fundamental rights, then Rawls's argument for the first principle deserves more serious critical examination. I first present what I hope is a plausible and sympathetic reading of Rawls's argument for the fundamental rights. It is both interesting and important that this argument can be expressed in a way that is largely independent of many of the more controversial features of Rawls's view, including the original position construction and the notoriously unpersuasive argument for maximin reasoning.

Rawls supports the first principle rights and liberties by connecting these rights to his account of moral psychology, specifically to what he calls the "two moral powers." These two powers are fundamental human capacities that explain why human beings are both appropriate moral subjects and agents, and Rawls takes them to be relatively uncontroversial assumptions about human moral psychology. These powers are, first, the capacity for a sense of justice and, second, the capacity for a conception of the good. The former, Rawls tells us, implies "a capacity to understand, apply, and act from (and not merely in accordance with) the principles of political justice that specify fair terms of cooperation." The latter is the capacity to "have, to revise, and rationally pursue a conception of the good" (Rawls 1990, §7).

A conception of the good is a system of values that defines our first-order aims and objectives. According to Rawls: "Such a conception is an ordered family of final ends and aims which specifies a person's conception of what is of value in human life; or alternatively, of what is regarded as a fully worthwhile life. The elements of such a conception are normally set within, and interpreted by, certain religious, philosophical, or moral doctrines in the light of which various ends and aims are ordered and understood" (Rawls 1990, 14).

It is important for Rawls that one's conception of the good is likely to change over time. Such change may be the result of rational self-reflection, interaction with others, or new information. Acceptance of an evaluative conception will imply acceptance of certain aims and interests. But because one's evaluative conception is likely to change over time, the interests one has as a result of acceptance of a particular conception of the good cannot be taken to be the constitutive identifying features of individuals: When a person rationally reconsiders her fundamental values and comes to accept a different or revised conception of the good, she is still the same person. In this sense, the capacities implicit in the moral powers define higher order interests: Our interest in maintaining the ability to critically revise our conception of the

good is separate from and prior to the interests implicit in our acceptance of a particular conception of the good. Our interest in maintaining the ability to exercise the two moral powers is therefore a “higher-order” interest that is, in this sense, fundamental to our conception of ourselves as agents who act and deliberate over time. Citizens in a liberal society identify themselves as independent of and not identified with any particular conception of the good. It will not do for public institutions to identify citizens with specific evaluative conceptions, because ideas of value change over time as individuals subject their ideals to rational scrutiny. It is in this sense that the higher-order interests implicit in the two moral powers are said to have priority over our first-order interests: It may be good for us when we get what we value and want. But it is even more important, argues Rawls, for us to be in a position to evaluate our wants and values.

The two moral powers are crucial elements of Rawls’s conception of citizens as “free and equal.” The fact that all citizens have these powers to at least a minimum degree is, “the basis for equality among citizens as persons” (Rawls 1971, § 77; 1990, § 7). The capacity for a sense of justice is necessary since it is one of the capacities that makes social cooperation possible. The “freedom” of persons is embodied first in the notion that persons as members of a liberal society will regard themselves as self-authenticating sources of claims on the basic institutions of society: They regard themselves as *entitled* to make claims on the basic institutions so that they may advance and pursue their conception of the good within the bounds of a public conception of justice. And the capacity to adopt, rationally revise, and pursue a conception of the good is among the most important constituents of the conception of citizens as free. Such rational review is sometimes associated with the Kantian conception of freedom of the will, which presupposes the ability to frame one’s choices reasonably instead of acting on first-level wants and desires. In the political context, the ability to revise and pursue our values is associated with freedom of conscience and other personal freedoms.

Throughout his work, Rawls employs his account of the two moral powers in identifying and justifying the fundamental liberal rights. Although he identifies the content of the first principle in terms of what he calls “basic liberties,” it is quite clear that he understands the first principle of justice to include both liberties and *rights*, understood as Hohfeldian claims. First principle protections for freedom of expression, thought, and conscience, for example, are understood to embody claims against others, quite similar to First Amendment protections for freedom of speech guaranteed in the U.S. Constitution.

In drawing up a list of basic “liberties” of this sort, Rawls notes that we might proceed in either of two different ways:

One way is historical: we study the constitutions of democratic states and put together a list of liberties normally protected, and we examine the role of these liberties in those constitutions which have worked well. While this kind of information is not available to the parties in the original position, it is available

to us—to you and me who are setting up justice as fairness—and therefore this historical knowledge may influence the content of the principles of justice which we allow the parties as alternatives. A second way is to consider which liberties are essential social conditions for the adequate development and exercise of the two powers of moral personality over a complete life. Doing this connects the basic liberties with the conception of the person used in justice as fairness. (Rawls 1993, 292–93)

Which are the liberal rights? They are just those rights that are necessary for the exercise of the capacity to understand, apply, and act from principles that specify fair terms of cooperation and the capacity to adopt, rationally revise, and pursue a “conception of the good.” Why should we care about the basic liberal rights? It is because our conception of ourselves as autonomous persons embodies a conception of ourselves as possessing the two moral powers. The fundamental rights are necessary for our exercise of these powers, so we value these rights as necessary for our autonomy. Since Rawls regards autonomy as a higher-order value that takes priority over other values we may have, the rights that protect autonomy are given priority over other elements of the conception of justice as fairness.

3. The Plausibility of Rawlsian Moral Psychology

What are the evaluative assumptions of this Rawlsian argument? As presented here, the argument for fundamental rights is more or less independent of the original position and many other controversial elements of Rawls’s broader view. The argument from the two moral powers does involve substantive assumptions about human moral psychology; it also assumes that those who possess these powers will have certain higher-order interests and that these interests should be understood as being *prior* to other lower-order interests. Are these assumptions plausible? Do we think of ourselves as possessing the moral powers described in Rawls’s argument, and if so, do we (necessarily?) have the higher-order interests Rawls describes? Do we, or should we, regard these interests as prior to our other values and interests?

As a first step toward answering these questions, we may rehearse familiar arguments for them: Anyone who has a sense that some pursuits are more valuable than others has a conception of the good, and anyone who hopes to shape her life around goals given by this evaluative conception hopes rationally to pursue her conception of the good. Because rational individuals will want to shape their lives around their values, they will also have reason to ensure, as far as possible, that social institutions do not prohibit them from rationally pursuing their ends. This is sufficient to support the claim that rational agents have a strong *prima facie* reason to value the rights and liberties that are necessary for the exercise of their capacity reflectively to evaluate their fundamental evaluative commitments.

It is significant for liberal theorists not only that different persons have

different conceptions of the good but also that a thoughtful person's conception of what is valuable in a human life will change as a result of life experience or as a result of rational self-reflection. Because thoughtful persons will recognize that the evaluative conception they now accept may change over time, they will also recognize that they have the higher-order interest Rawls describes: an interest in protecting the capacity for critical self-reflection about commitments. This implies an interest in promoting and preserving political institutions that are flexible enough to accommodate changes in current commitments and values. This argument can even be accepted within a narrow preferentialist framework: A person's interest in preserving the ability to satisfy her *preferences* generates a reason to arrange her life so she will not be thwarted in her ability to satisfy the preferences she will have in the future.¹ This argument from the value of the two moral powers is also the basis for a limited argument against perfectionist institutions, which attempt to impose a conception of human value by limiting individual liberty to pursue alternate conceptions. Recognizing that current commitments may change over time, rational individuals will recognize that they have an interest in maintaining circumstances of political liberty that allow rational reflection and reconsideration of current fundamental commitments.

Some have mistakenly argued that commitment to the value of the second moral power, the ability to critically revise and rationally pursue a conception of the good, involves a kind of value skepticism or relativism—the belief that evaluative systems are all equally good so that in the end it doesn't really matter which evaluative system we accept. But the ability to revise beliefs is especially important for value realists, not for skeptics. One important reason to want to preserve the ability to rationally revise our evaluative commitments is that we may believe that some evaluative schemes are better justified or morally superior to others. Realists will want to get their values right and will value the ability to revise their conception of the good because, as Mill and others have insisted, they cannot be fully justified in the acceptance of the values they hold unless they are in a position to consider their basis and justification.

But neither is the value of rational reconsideration bound to value realism or objectivism: Even noncognitivists can acknowledge that evaluative *change* may have a cognitive component and that we have good reason to value our ability rationally to reconsider our evaluative assumptions. Noncognitivists like Simon Blackburn, Allan Gibbard, and even A. J. Ayer believe that their metaethical theories are true and justified, and well supported by the careful arguments they offer. If they regard their arguments as rationally persuasive, then they must be open to the possibility that some error-bound realists might eventually see the light and come to understand the rational grounds for noncognitivism. According to Allen Buchanan:

All the principle of revisability commits one to is the view that valuation is a rational enterprise. By [this] I mean the very minimal view that value judgments, and hence conceptions of the good, are subject to rational assessment.

On the weakest interpretation of this view, rational assessment is limited to considerations of the consistency or coherence of one's value judgments with each other and with one's other beliefs. . . . So even if the justifiability of a life plan is only a matter of achieving and maintaining the consistency or coherence of one's own system of belief, this is quite enough to commit one to the principle of revisability. (Buchanan 1975, 399)

As Buchanan notes, the value of rational reconsideration increases if one regards values as objectively discoverable and supported by reason. Rawls's assumption that people can rationally assess their conceptions of value seems fully acceptable as an assumption about human moral psychology, if not entirely uncontroversial. And rational persons who have an evaluative conception and regard valuation as (minimally) subject to rational assessment have reason to value and protect their ability to exercise the second moral power.

Even minimalist assumptions about the relationship between reason and value imply that there is good reason to accept Rawls's account of the first moral power, the capacity to understand, apply, and act from principles that specify fair terms of cooperation. If our values can be the springs of action, and if values are subject to rational assessment, then our ability to assess our values may importantly explain the possibility that we can act from the principles we come to accept after rational consideration. If Rawls can support the claim that the principles of justice embody fair terms of cooperation, and the claim that reflective persons have sufficient reason to value fairness in themselves as well as in the institutions of society, then the value of the first moral power may be partly explained in terms of the second: The capacity for a sense of justice is partly explained by our ability to assess and rationally revise our conception of the good. And this is a capacity that will be highly valued by all rational beings who have beliefs about what makes a human life go well. If we are to some extent rational, if we have a conception of the good, and if we regard valuation as subject to rational assessment, then we will value our capacity to exercise the two moral powers. But if we value our capacity to exercise these powers, then we will also value highly any other things that are necessary for their exercise. The basic rights and liberties described in the first principle of justice are necessary for the exercise of these powers, so we will highly value these rights and liberties.

This reconstructs an important part of Rawls's argument for the first principle of justice. It is important once again to emphasize the extent to which this argument can be articulated in a way that makes it independent of the original position and other controversial features of Rawls's view. In the account of Rawls's argument I have offered, there is no reference to the more controversial features of Rawls's view.² If Rawls's assumptions about moral psychology and human interests employed are plausible, this is a strong and interesting argument for the basic liberal rights. In section 4, I examine an early attempt by Allen Buchanan to extend Rawls's argument to show that all practically rational persons have reason to value the fundamental liberal rights.

4. Fundamental Rights, Revisability, and Rational Choice

In his early work, Rawls was tempted by the notion that liberalism might be a uniquely rational political conception. In *A Theory of Justice*, for example: "The merit of the contract terminology is that it conveys the idea that principles of justice may be conceived as principles that would be chosen by rational persons, and that in this way conceptions of justice may be explained and justified. The theory of justice is a part, perhaps the most important part, of the theory of rational choice" (Rawls 1971, 16). This claim links Rawls's early project with a long line of traditional liberal theorists who have tried to show that a liberal conception of the state is uniquely choice worthy and rationally superior to all alternative views. Such rationalist foundations stretch back to Condorcet's pure dream that perfect democracy would eventually lead to the most perfect use of the different knowledge of different individuals and that this would gradually lead us toward the most perfectly rational political institutions. More recent strains of this rationalist theme can be found in Vilfredo Pareto's ideal of a mathematical politics, David Gauthier's *Morals by Agreement*, James Buchanan's work on constitutional economics, and John Harsanyi's rational-contractarian defense of utilitarianism.

Rawls has now abandoned the claim that the theory of justice is part of the theory of rational choice. In 1989, he wrote that his earlier claim was "simply a mistake. What should have been said is that the account of the parties [to the original position] and their reasoning uses the theory of rational choice (decision), but that this theory is itself part of a political conception of justice, one that tries to give an account of reasonable principles of justice. There is no thought of deriving those principles from the concept of rationality as the sole normative concept" (Rawls 1989, 60). It is important to understand both why Rawls was initially attracted to the notion that liberalism might be uniquely rational and the reasons for his later rejection of this claim. In this interest, it is worthwhile to examine one of the most interesting and promising attempts to make good Rawls's early case for liberal rationalism. Allen Buchanan's (1975) reconstruction of Rawls's argument is of special interest because of its formal clarity and because it relies centrally on the argument from the two moral powers and the value of rational revisability. It is also significant because Buchannan's work has influenced Rawls and many other contemporary liberal theorists.³ The partial failure and limited but decisive success of Buchanan's argument is significant in its own right but also because it brings into sharp relief an important limitation in Rawls's recent account of political liberalism.

Buchanan articulates the substance of the second moral power as a formal principle: "*Revisability Principle R*: One ought, *ceteris paribus*, to maintain an attitude of critical revisability toward one's own conception of the good (or life plan) and of openmindedness toward competing conceptions" (Buchanan 1975, 399). Buchanan argues that this principle is a principle of practical rationality. He argues that one can reject this principle only if one holds that

- (a) One's theoretical judgment is infallible.
- (b) One's judgment about the goodness of ends is infallible.
- (c) One's judgment about the ranking of ends is infallible.
- (d) One is infallible in one's judgment that (a), (b), and (c) are true. (Buchanan 1975, 400)

Since changing theoretical judgments, changing judgments about the value of ends, or changing judgments about the ranking of ends would each imply revisions in one's conception of the good, only an agent who holds each of these can rationally reject the revisability principle. But few people regard themselves as infallible, and surely no one could be justified in regarding herself as infallible in so many domains. If not, one may argue, then no rational person can be justified in rejecting the revisability principle itself. Buchanan hammers home his claim that no one can be justified in rejecting the revisability principle by arguing that its rejection could be rational only if one believes, in addition to items a–d above, that

- (e) Both the factual circumstances which one's theoretical beliefs represent and the values expressed in one's judgments about ends and their rankings are immutable, and
- (f) One is infallible with respect to one's belief that assumption (e) is true. (Buchanan (1975, 401))

If Buchanan is right, then it would seem that only an omniscient god could be justified in rejecting Principle R: "It is difficult to imagine a less plausible set of epistemological theses than (a)–(f). Yet if one is to reject the principle that one ought to maintain an attitude of critical revisability toward one's life plan, one must embrace all of them. If this is so, then R is at least as plausible as these epistemological theses are implausible" (Buchanan 1975, 401).

But the revisability principle has two corollaries, and acceptance of R implies acceptance of these as well. The first is "*Epistemic Corollary Re*: One ought, *ceteris paribus*, to attempt to satisfy the epistemic conditions necessary for the effective expression of an attitude of critical revisability" (Buchanan 1975, 401). The second corollary is practical and specifies a rational interest in implementing and preserving the conditions necessary for flexible changes in one's evaluative commitments: "*Implementation Corollary Ri*: One ought, *ceteris paribus*, to attempt to provide for the implementation of those new or revised conceptions of the good which one may develop as a result of one's commitment to R and Re" (Buchanan 1975, 402).

If one follows the argument this far, it is difficult to avoid the next precipitous step: It is argued that the political and civil liberties listed in Rawls's first principle of justice are necessary constituents of any political society that hopes to allow citizens the liberty to form and to rationally revise and pursue a conception of the good. Liberties of thought and discussion are necessary to satisfy the epistemic corollary while liberties of movement and other civil liberties are necessary for the implementation of revised evaluative conceptions.

Even the distributive features of Rawls's conception of justice as fairness can be supported with this argument: The primary goods are described as all-purpose means, necessary for the pursuit of any reasonable conception of the good.⁴ An adequate provision of such goods must then be necessary for those who wish to maintain the freedom to implement their evaluative conception. Universal provision of at least a basic minimum of primary goods may be defended as the material conditions necessary for the exercise of the two moral powers. It is noteworthy that this argument supports a more minimal distributive principle than Rawls's difference principle: The implementation corollary requires only that one have access to a basic minimum provision of primary goods.

Buchanan's account of the revisability argument sets in sharp relief the specific claims that must be defended by advocates of Rawls's conception of justice as fairness. If the argument works, it provides the strongest kind of support for liberalism: If *R* is a principle of rationality, then all rational agents must accept it. If acceptance of *R* implies rational acceptance of *Re* and *Ri*, then rational agents must accept them as well. And if acceptance of these corollaries implies an interest in creating and protecting liberal rights, then all rational agents have an interest in promoting those rights and the institutions that protect them. If successful, the revisability argument would imply that liberalism is uniquely rational—that it is not only rationally permissible to accept a liberal theory of the state, it is irrational to reject it. Just as important, if this argument works, it provides a foundation for liberalism that bypasses Rawls's appeal to the original position as a morally credentialed perspective from which to choose principles of justice. Many have rejected Rawls's theory because they cannot accept Rawls's account of the original position choice. If liberalism can be defended without appealing to the original position.

What form of liberalism should we accept, and which are the fundamental liberal rights? Given this understanding of the theoretical foundations of liberalism, we can define the set of fundamental liberal rights with a formal membership condition: The fundamental liberal rights are just those rights that are necessary for the protection of people's ability to adopt and to rationally revise and pursue their conception of the good. The dispute between libertarians and liberals then gains context and content as a dispute about whether welfare rights are necessary for these projects. This provides a context for other tricky questions like the question whether economic rights should be included among the Rawlsian "basic liberties." This becomes a question about the relationship between these rights and the ability to be flexible and self-reflectively rational with respect to our evaluative commitments.

5. A Problem with Rational Revisability

If we accept Buchanan's argument that *R*, *Re*, and *Ri* are principles of practical rationality for imperfect agents like ourselves, then it seems that we must

also be committed to rationally supporting the basic liberties that constitute the core of a liberal political theory. But there are two ways to call this argument into question. First, we might try to show that Buchanan's principles are not, in fact, principles of practical reason. Second, we might show that rational agents would sometimes be justified in rejecting these principles even if these principles were principles of practical reason.

How would we argue that Buchanan's principles are not principles of practical reason? Buchanan bases his claim that they *are* principles of practical reason on his argument that they are principles that every rational agent has sufficient reason to accept. If it can be shown that there are circumstances in which rational agents would be justified in rejecting the revisability principle and its corollaries, this would effectively undermine this portion of Buchanan's argument. Interestingly, showing that rational agents sometimes have sufficient reason to reject these principles will not show that they are *not* principles of practical reason: Derek Parfit has argued that practically rational agents sometimes have sufficient reason to reject even fundamental principles of practical rationality (Parfit 1984, part I). But if some rational agents have sufficient reason to reject the revisability principle, then they can also have reason to reject the liberal rights that protect our ability to rationally revise our evaluative commitments. This would be sufficient to show that Rawls's and Buchanan's argument does not show that liberalism is uniquely rational.

I will argue that Buchanan's principles are *not* principles of rationality even though they are principles most of us surely have good reason to accept and employ most of the time. But some people in some circumstances have sufficient reason to reject these principles and to adopt more inflexible and nonrevisable guides. The way in which Buchanan's argument fails is instructive not only for those interested in rationality but also for those interested in understanding the relationship between rationality and liberalism, for if some people are justified in rejecting Buchanan's principles, they may lack adequate reason to promote liberal institutions that protect their ability to rationally revise their current evaluative conception.

When is it rational to reject Principle R? Whenever I have reason to believe that my future judgment about "the good" may be inferior to my present and past judgment. Consider the situation of a youthful idealist who self-reflectively endorses her current conception of value. This person recognizes, however, that people often forsake youthful ideals and mistrusts her own ability to maintain her current ideals. If she suspects that she might later backslide on her current commitments, it might be rational for her to try to limit her opportunities to revise her conception of the good. In a famous passage, Derek Parfit describes such a predicament:

Let us take a nineteenth century Russian who, in several years, should inherit vast estates. Because he has socialist ideals, he intends, now, to give land to the peasants. But he knows that in time his ideals may fade. To guard against this possibility, he does two things. He first signs a legal document, which will

automatically give away the land, and which can only be revoked with his wife's consent. He then says to his wife, "If I ever change my mind and ask you to revoke the document, promise me that you will not consent." (Parfit 1973, 145)

In binding his future choice with a present commitment, Parfit's Russian nobleman restricts his ability rationally to pursue the new conservative ideals he may acquire later, after he reconsiders his present socialist ideals from the new perspective he will have when he inherits his wealth. Since he regards his present judgment as superior to the judgment he may have later, he restricts his ability to rationally reconsider his present commitment. If he is right to doubt his ability to remain loyal to his ideals, and justified in regarding these ideals as the right ones nonetheless, then the course of action he chooses seems to be a rational response to his expectation of backsliding. But in binding his future judgment to his present judgment, he implicitly rejects the revisability principle. If he is justified in his expectation that he will become selfish and reactionary, then his choice to reject this principle seems quite justified and rational. But if so, then it can sometimes be rational to reject the revisability principle even when one does not believe oneself infallible in the ways that Buchanan describes.

This undermines Buchanan's argument for the claim that the revisability principle and its corollaries are principles of rationality. By implication, it undermines his strong claim that all practically rational agents have reason to support the fundamental liberal rights. The revisability argument fails as a rationalist foundation for liberalism since it does not succeed in showing that it is irrational to reject the liberal conception of the state.

Perhaps recognition that the strong version of this argument fails partly explains Rawls's rejection of his early claim that the theory of justice is part of the theory of rational choice. More recently, Buchanan himself has recognized that this early argument fails to recognize the importance of rational commitment and that there may be circumstances in which a rational agent might reject the revisability principle. But as he also recognizes, this partial failure of the argument from revisability and rational choice does not imply its irrelevance: Most of us still have sufficient reason to accept the revisability principle in all but exceptional circumstances. Because of this, we also have sufficient reason to support the political rights and liberties that make possible our own exercise of the two moral powers. The argument is important even if it shows that most people have reason to accept liberalism at least most of the time, and even if it fails to show that liberalism is uniquely rational. We can learn much about the limits of liberalism by considering the circumstances in which people's rational rejection of the revisability principle may justify their rejection of the fundamental liberal rights.

6. Two Objections to Rational Revision and Fundamental Rights

When is it rationally permissible to refrain from critical self-reflection about

our evaluative commitments, or even to take steps to cut off our ability to engage in rational reconsideration? There are at least five different kinds of circumstances that can make it rational for a person to reject the revisability principle. First, a person might firmly and justifiably believe that her current commitments are the *right* ones and that further deliberation is likely to raise doubt and shake faith in “the truth.” Second, some people may trust an authority more than they trust themselves. Once again, there are circumstances in which this trust could be justifiable. Such a person may view rational reconsideration as likely to lead her to accept views that are worse, in the relevant respect, than the view she now accepts on trusted authority. Third, one might have reasons to mistrust one’s own future reasoning powers and might, as a way to compensate for this, take steps to limit later freedom to deliberate and reconsider. In this mode, Kant considers the predicament of a person who knows that he has contracted hydrophobia and may endanger others when the disease affects his ability to make rational decisions (Kant 1797/1991, 220). Fourth, we may regard deliberation as a costly process and rationally decide that we will most likely have better ways to spend our time. When deadlines approach, for example, we may have good reason to limit our options for deliberative reconsideration as a way of forcing ourselves to focus on the task at hand. Fifth and finally, one might plausibly regard the *stability* of one’s evaluative commitments as possessing a value that is to some extent independent of their being maximally justified from the epistemic point of view. If we want others to regard us as *reliable*, we may be concerned to maintain our internal evaluative status quo whether or not it is the one we would adopt at the end of an exhaustive process of rational revision.

Recent critics have attacked liberal political theories by arguing that liberalism incorporates substantive evaluative assumptions—that liberalism itself contains or embodies a specific nonneutral conception of the good. One form of this objection focuses on the value of rational reconsideration and its association with personal autonomy: This connection is quite clear in Rawls’s identification of the two moral powers as preconditions of individual autonomy and in Buchanan’s implicit association between autonomy and the rational reconsideration of values. In sections 6.1 and 6.2, I examine two versions of this objection.

6.1. Objection One

Some critics have argued that the liberal emphasis on critical self-reflection is likely to leave citizens of a liberal state rootless and uncommitted, separated from any constitutive values that could give shape to their lives. On this view, often associated with the communitarian critique of liberalism, liberal theories fail to accommodate the fact that individuals typically have deep commitments that are not subject to rational revisability. Fortunately, this claim can be evaluated in partial abstraction from other features of the liberal-communitarian debate. According to Alisdair MacIntyre, the liberal emphasis on autonomy and rational reconsideration of values embodies a concep-

tion of the person as a set of open possibilities, with no necessary attachments or fixed ends. But this understanding of political community, argues MacIntyre, denudes the community of common virtues and ideals (MacIntyre 1984, 145). MacIntyre and other communitarian and postcommunitarian critics describe liberal citizens as rootless social atoms, incapable of concrete or long-standing commitments and attachment to community and place. Even some *defenders* of liberalism seem to accept this critique. Steven Macedo writes:

[A liberal society] would probably pay for [its] diversity, tolerance, and experimentation with a degree of superficiality, the consequence of a lack of depth or persistence in commitments. There might be a certain amount of feigned or affected eccentricity. And with all the self-critical, self-shaping introspection, perhaps also a degree of self-absorption or even narcissism. . . .

Liberalism holds out the promise, or the threat, of making all the world like California. By encouraging tolerance or even sympathy for a wide array of lifestyles and eccentricities, liberalism creates a community in which it is possible to decide that next week I might quit my career in banking, leave my wife and children, and join a Buddhist cult. (Macedo 1990, 278)

The connection between the claim that liberal citizens will be rootless and the revisability principle is clear: If liberal rights are intended to protect people's ability to rationally revise and perhaps reject even their deepest values, then these rights might be thought to promote the superficiality and narcissism Macedo describes. This is hardly an attractive picture of a citizen in a liberal state. But are liberal citizens really likely to be wishy-washy and undirected in this way? Certainly it is *open* to them to be uncommitted and to lack constitutive commitments, but just as certainly it does not follow that freedom for critical self-examination will leave people uncommitted. One possible outcome of the process of critical self-examination might be that a person will renew and strengthen her commitment to her deepest values and will emerge better able to pursue those values effectively. We only need to look around us to confirm that liberal citizens can and do have stable commitments, even if such commitments arise through a process of rational reflection and reconsideration instead of being simply adopted from the prevailing social and community standards.⁵ One may participate in and even be *immersed* in the life of a community without sacrificing one's critical capacity to evaluate that community's values.

But of course rational self-reflection sometimes will lead people to change their conception of value, and people's values may be less stable where the right to engage in rational reconsideration is protected and valued. As critics like MacIntyre and Macedo might emphasize, it is plausible to believe that there is independent value in the stability of one's evaluative beliefs: A person who revised her evaluative commitments in response to every street-corner fanatic, who took on a new evaluative ideology every other day (or year), would be wishy-washy and uncommitted in just the way Macedo describes.

But the value of stability in one's values is not absolute and cannot be entirely independent of the content of the values to which one is stably committed. If our values are bigoted, then stability will be no great virtue. Liberal rights may protect our ability to engage in rational reconsideration, but they cannot guarantee that we will use our capacity for self-critical reflection well. Liberals can argue, following Mill, that this is an acceptable price to pay for the liberty that fundamental rights afford. But critics may still emphasize the cost implicit in evaluative change. Perhaps liberals are to be identified as those who regard these costs as an acceptable price to pay for fundamental liberties.

6.2. Objection Two

If liberals must recognize the value of rational reconsideration, then Daniel Bell is not a liberal. Bell emphasizes the personal and psychological cost of rational self-reflection when this reflection leads us to reject values that are or have been fundamental guiding forces in our lives. He is unpersuaded that the benefits we gain by protecting our right to reconsider our fundamental commitments outweigh the potential cost we may incur if rational reconsideration undermines our commitment to values that define us as persons:

If the choice is between a picture of a self totally immersed in its social world and incapable of any critical distance whatsoever, and one partially immersed but also able to distance itself from any one particular attachment it chooses to focus on, the liberal suggestion admittedly appears more plausible. But is there not another alternative, one that perhaps better captures the way we think of ourselves and our core commitments? I have in mind the idea that we are indeed able to re-examine some attachments, but that there are others so fundamental to our identity that they cannot be set aside, and that an attempt to do so will result in serious and perhaps irreparable psychological damage. (Bell 1993, 10)

If Bell is right, then some people may be *harmed* by too much critical self-examination. The attempt to set aside or reconsider their most basic constitutive commitments will be so wrenching that it will cause "irreparable damage." It is not difficult to imagine the kind of situation that Bell has in mind: A person whose identity is deeply bound up with the community in which she lives will indeed suffer if she makes an effort to wrench herself from that community and from her identity in it. For example, a woman who finds herself in a sexist marriage may, after critical reflection, decide that she can no longer play the role of a passive housewife. The only available remedy may be entirely to redefine the terms of family interaction. In many cases, the only remedy may be divorce or separation—a dissolution of the family community that is sure to be painful and difficult for all members. It is not difficult to agree with Bell that the attempt to set aside this previous identity may cause irreparable psychological damage.

But even if Bell is right that rational reconsideration sometimes involves serious risks, even if we incur these risks if we accept Buchanan's Principle R

or protect our ability to exercise Rawls's two moral powers, this may not be enough to persuade us to forbear from critical self-reflection or to reject the liberal rights that protect our ability to critically evaluate our values. Even when shedding unsupportable constitutive values is painful and wrenching, even damaging, it may still be a valuable thing to do. It may be wrenching and dislocating to extricate one's self from a bad marriage, but it is not obviously better to remain in it. In a dialogue written by Will Kymlicka, the character Louise says to her communitarian friend Anne:

We were "damaged" and "disturbed" by trying to escape patriarchy, but we were even more damaged and disturbed within patriarchy. You never once . . . consider how people can be damaged by their constitutive attachments, how these attachments can systematically undermine people's sense of self-respect, and make them subordinate to others. Feminists will insist that we be free to question our constitutive attachments, not just when they break down, but even when they are working as expected, for the subordination of women is built into our everyday expectations about men's and women's behavior. . . . What we need is a conception of the self that recognizes that we have constitutive attachments, and that they are damaging to give up, but that these attachments can themselves be damaging, and hence that we must be free to question and possibly reject them even when they don't "break down." (Kymlicka, in Bell 1993, 210)

We can connect this example with the problem of stability that occupied us in section 6.1: If people are free to reconsider their commitments, then they will be free to reconsider commitments like marriage and community membership. In a liberal society in which people have the freedom to reconsider and redefine their commitments, people are more likely to suffer the psychological pain involved in divorce or the anguish that might come from breaking traditional community ties. But in an illiberal society, people are more likely to suffer from the pain and disadvantage incurred when they are *unable* to dissociate themselves from institutions that no longer reflect their values as those values change over the course of a lifetime. It is not at all clear that this latter risk is less serious than the risks associated with freedom for critical self-examination, and if not, then Bell's observation that critical self-reflection may have costs cannot constitute a telling objection against liberalism.

7. Toward a Modest Defense of Liberal Rights

In my response to the two objections above, I have argued in favor of liberalism. But the character of this argument is quite different from the character of Buchanan's argument for the unique rationality of liberal institutions or from Rawls's early argument associating the theory of justice with the theory of rational choice. Instead of trying to show that liberalism is uniquely rational, I have argued that the risks associated with liberalism are not greater than the

risks associated with the rejection of liberalism, so Bell's argument, for example, does not identify a disadvantage that is peculiar to liberalism alone. But some people may regard the dangers of critical self-reflection as more worrisome than the danger of being trapped by one's constitutive commitments.

For example, one can imagine that the members of an Amish community might take steps to prevent members from engaging in the kind of critical self-reflection that might cause them to renounce their community membership. Lacking a rationalist argument of the kind Buchanan and Rawls once hoped to articulate, we cannot condemn such people as irrational or unreasonable. This limitation has far-reaching implications for the legitimacy of liberal institutions, especially when the maintenance of such institutions requires that we use the coercive power of the state to limit the rights of illiberal minorities, like the Amish, to preserve their communities by limiting the ability of community members to engage in rational reconsideration of community values.

Rawls's claim that the first principle liberties have "lexical priority" over other elements of the conception of justice as fairness depends on his claim that the higher-order interests these rights protect have priority over the first-level interests we have because of the particular conception of the good that we accept. If some people are justified in rejecting the revisability principle, and their reasons for rejecting it reflect first-order values that they have because of the conception of the good they accept, then the revisability principle cannot be *prior* to these first-order interests. This undermines the claim that the first principle of justice must have lexical priority over other principles and aims. If liberalism must be defended by showing that the risks associated with nonliberal institutions are greater (even for nonliberals) than the risks associated with liberal institutions, then it becomes important to know specifically what the risks are, and to whom they are risks. If advocates of a nonliberal theological state are persuaded that liberalism is not the political conception favored by God, then no matter how rational they may be, they will be unpersuaded by risk-balancing arguments for liberalism. Those who reject the revisability principle may be *rationaly justified* in rejecting the lexical priority of justice over other social ends. The problem of pluralism is especially pressing when there is a significant minority of people who are rationally justified in accepting an illiberal conception of justice, and who have sufficient reason to reject the fundamental liberal rights.

If the argument I have given here is sound, it will not follow that liberalism is unacceptable. Nor will it follow that we should place a higher value on our first-order aims than on our ability to exercise the two moral powers. For similar reasons, it will not follow that we have reason to reject the revisability principle. Most of us surely have excellent reasons to preserve our ability to rationally revise and pursue a conception of the good, and our support for fundamental constitutional rights may reflect this in much the way that Rawls and Buchanan describe. But it is instructive to focus on those who, because of their constitutive commitments, may have good reason to reject liberal

rights and liberal institutions. This focus will help us see the limits of liberal argumentation and discover some of the limits of liberalism itself.

8. Rawls on Constitutive Commitments and Critical Self-Reflection

There is a persuasive liberal response to the objections discussed above: liberalism does not require or impose rational reconsideration of basic evaluative commitments on unwilling and otherwise unreflective citizens, it simply requires that people must not be denied the freedom to critically revise and pursue their conception of the good. Because of this, citizens whose constitutive commitments are consistent with the liberal principles of justice need not call their fundamental ideals into question and need not experience the psychological harms that are supposed to result from rational self-reflection. Rawls himself acknowledges that people have constitutive commitments, and he does not regard this as inconsistent with the conception of justice as fairness, or the argument from revisability:

Citizens may have, and normally do have at any given time, affections, devotions and loyalties that they believe they would not, and indeed could and should not, stand apart from and objectively evaluate from the point of view of their purely rational good. They may regard it as simply unthinkable to view themselves apart from certain religious, philosophical, and moral convictions, or from certain enduring attachments and loyalties. These convictions and attachments . . . help to organize and give shape to a person's way of life, what one sees oneself as doing and trying to accomplish in one's social world. We think that if we were suddenly without these particular convictions and attachments we would be disoriented and unable to carry on. In fact, there would be, we might think, no point in carrying on. (Rawls 1993, 31)⁶

It is evident that Rawls himself sees no conflict between the value of rational revisability and the notion that people may have constitutive commitments and that they may be unable or unwilling to stand apart from their deepest values. There is no assumption that people will be perfectly rational in their *exercise* of the rights that protect the capacity for critical self-reflection, or that they will be self-transparent in their efforts to criticize their deepest commitments.

I have argued that some people may be justified in rejecting the revisability principle (and the fundamental liberal rights) because they are in the grip of *specific* constitutive commitments. These are people who will be rationally unpersuaded by the liberal argument under discussion here. In section 9, I argue that the existence of such people presents a problem for Rawls's account of political legitimacy.

9. Constitutive Commitments and Liberal Legitimacy

If the argument presented just above is right, then there may be citizens in a

liberal state who are rationally committed to values that justify their rejection of liberal rights and institutions. Some of these will be individuals who are committed to values that many of us may regard as repulsive. Macedo gives the example of Nazi citizens in a liberal state who

must respect the property, the political rights, and freedoms of Jewish Americans. They may, occasionally, march in Jewish communities, but they must get permits, keep order, and otherwise respect the peace and quiet of these neighborhoods. They can gather in uniforms, with broadsheets, slogans, music, and other paraphernalia, in legally rented private halls, as long as they do not make too much noise. Nazis must pay taxes to support the liberal institutions they detest, including public schools. The liberal polity requires that the Nazis be law-abiding Nazis and that is not easy. They cannot be "gung-ho" Nazis, in fact they cannot *be* Nazis at all, but only play at it. (Macedo 1990, 260)

One might not think that this is much of a problem: If it's only Nazis, fascists, and monarchists who can't support liberal political institutions, then, one might think, so much the worse for them. If the only people who can't be comfortable liberal citizens are those who reject this principle of moral equality, this may not constitute a serious problem for liberal political theory. But Margaret Moore argues that there are other more inoffensive groups who will be unable to accept the values implicit in the liberal conception of justice:

It is not only groups such as the Nazis whose lives are coercively structured by liberal principles. Other groups, such as the Amish in the mid-western United States and the Old Russian Believers in northern Alberta, find the liberal emphasis on individual autonomy and critical reflection threatening to their more communally oriented and simple religious existence. Their cultural survival depends on isolating their children from the many possibilities for choice that surround them: it depends, in other words, on devaluing the exercise of autonomy and emphasizing instead living according to the word of God. (Moore 1993, 178)

Notice the connection between rejection of Buchanan's revisability principle and rejection of the liberal rights: Those like Macedo's "liberal Nazis" and Moore's "Old Russian Believers" who have reason to reject the liberal conception of the state are just those who have reason to reject the revisability principle and its implications concerning the justification of fundamental rights. The existence of such people has sometimes been thought fatally to undermine the justification for fundamental liberal rights. Again according to Moore:

If liberalism cannot claim to be derived in a way which is neutral among the competing conceptions of the good prevalent in contemporary society, how does it justify coercing those who do not accept liberalism to live according to its principles? This is a particular problem for liberalism because it is committed to the view that institutions or principles are legitimate only if they secure the consent of those subject to them. . . . This confines valid consent or rational consent to those who accept the liberal starting point. But [liberal apologists] . . . cannot

show that not accepting the liberal starting point is irrational. And this means that it is unjustifiable to confine valid consent to those who accept the liberal doctrine of equal respect for persons and the liberal concept of morality. To confine valid consent to those who accept liberal assumptions is on all fours with the communist who claims that her theory is legitimate because acceptable to those who are not blinded by false consciousness (and is unable to give a non-circular explanation of what this is) or the fascist who claims legitimacy for her theory because grounded in an unargued-for hierarchical conception of morality and society. (Moore 1993, 137–38)

If there are some people who have no compelling reason to accept the liberal commitment to basic civil and political rights and liberties, this is a problem for liberalism, since liberals have generally argued that institutions and associations are legitimate only if they can be rationally justified to those who are subject to them. Indeed, Jeremy Waldron (1993) has identified this idea of the rational defensibility of institutions as the core of the liberal view, and in one of the most famous passages in *Political Liberalism*, Rawls writes:

When may citizens . . . properly exercise their coercive political power over one another when fundamental questions are at stake? To this question, political liberalism replies: our exercise of political power is proper and justifiable only when it is exercised in accordance with a constitution the essentials of which all citizens may reasonably be expected to endorse in the light of principles and ideals acceptable to them as reasonable and rational. (Rawls 1993, 217)

But what if there are citizens in a liberal state who cannot reasonably be expected to endorse these “constitutional essentials” in light of principles acceptable to them as reasonable and rational? What if these citizens are led by their deeply and rationally held evaluative commitments to violate the strictures of the liberal state, perhaps by restricting their children’s opportunities by preventing their exposure to liberal ideals? Like the Supreme Court in *Yoder v. Wisconsin*, many liberals may regard this as a violation of children’s right to an adequate education.⁷ What if it is necessary to use “the coercive political power” of the state to prevent rational but illiberal citizens from conscientiously violating the rights of others? In such circumstances, Rawls’s principle of legitimacy seems to imply that our use of force against them is illegitimate. But surely the liberal state will protect the rights of others even in circumstances such as these. The response that “such people accept a conception of the good that is not reasonable” will be small comfort to those members of liberal states who are subject to the state’s coercive power but who have no reason to accept the principles that govern the use of that power.

If there are citizens in a liberal state to whom the basic rights and liberties cannot be justified, this undermines the legitimacy of liberal institutions, and recognition that there can be such persons provides important insight into the limits of liberal justice. I do not believe that this should lead us to accept Moore’s claim that the liberal who is willing to use coercion for protection of rights and to guarantee that interaction is consensual is “on all fours with”

the fascist or the “ethnic cleanser” who wants an ethnically pure state and who is unconcerned about the violation of rights. But it is clear that the liberal principle of legitimacy depends on more fundamental commitments, and involves a more substantive moral conception, than either critics or advocates of liberalism have typically acknowledged. The problem of rational illiberal minorities yields two important questions: First, what is a liberal state to do with rational but illiberal citizens? Second, what are the more fundamental moral underpinnings to the liberal view?

Rawls’s answer to the first question is clear and uncompromising: He insists that the liberty of intolerant persons and groups should be restricted “only when the tolerant sincerely and with reason believe that their own security and that of the institutions of liberty are in danger” (Rawls 1971, 220). This answer provides the ground for the claim that liberal institutions will impose the lightest possible burden on those who conscientiously dissent, and it may be unreasonable to expect more from any political theory. Surely there are good reasons to think that political regimes that *deny* the fundamental liberal rights will be much harder on rational and conscientious dissenters and that illiberal minorities may still prefer to be minorities in a liberal state than in an authoritarian state built around values that are neither liberal nor their own. Thus, theocratic Christian fundamentalists may prefer living under liberal institutions rather than living in a theocratic Muslim state. This provides at least some justification for the claim that liberal values are not “on all fours” with those of illiberal regimes.

To find the answer to the second question, to articulate the basic evaluative underpinnings of liberalism, we must look further. According to Margaret Moore (1993), the fundamental evaluative assumption of liberalism is the identification of the “person” with the capacity for autonomy. According to Buchanan, at least in the early article considered here, it is the higher-order value of rational reconsideration of our fundamental commitments. According to early Rawls, it is a commitment to the moral equality of citizens. In Rawls’s later work, the fundamental claim is that liberal institutions will be acceptable at least to those who are reasonable and who accept a reasonable conception of the good. Brian Barry once claimed that liberals are committed to a much more substantive Faustian conception of persons:

Liberalism rests on a vision of life: a Faustian vision. It exalts self-expression, self-mastery . . . ; the active pursuit of knowledge and the clash of ideas; the acceptance of personal responsibility for the decisions that shape one’s life. For those who cannot take the freedom, it provides alcohol, tranquilizers, wrestling on the television, astrology, psychoanalysis, and so on, endlessly, but it cannot by its nature provide certain kinds of psychological security. (Barry 1973, 127)

I am not persuaded by Barry’s claim that liberals must embrace this Faustian vision. It seems unlikely that there is any unique set of fundamental evaluative assumptions that all liberals must have in common—different people

may have quite different reasons for accepting and promoting fundamental rights. If there is no common evaluative core shared by all liberals, then the attempt to articulate the necessary evaluative assumptions of liberalism is hopeless. The best we can hope for, perhaps, is to describe a range of evaluative assumptions that are individually sufficient for acceptance of the fundamental liberal rights. If we find that liberalism can be defended on the basis of an exceptionally wide range of evaluative assumptions, this may be regarded as an advantage of the liberal conception of justice. Clearly, this is what Rawls has in mind when he says that political liberalism can be the object of an overlapping consensus on the part of individuals who have widely divergent but reasonable conceptions of the good.

Another modest way to defend the liberal conception of the state would be to show that evaluative assumptions that justify this conception are minimal and that many or most people have good reason to accept these assumptions. Understood in these more modest terms, Buchanan's reconstruction of Rawls's argument for the fundamental liberal rights may be decisively successful. Most of us, surely, do have good reason to accept the revisability principle and may have good reason to defend our commitment to the fundamental liberal rights in much the way Buchanan describes.

In the spirit of this more modest project for the defense of fundamental liberal rights, I propose that we may defend liberal institutions in terms much less contentious than those described by Barry. Although some may find Barry's Faustian liberalism appealing, I would argue that one should find Buchanan's and Rawls's argument for the fundamental rights persuasive if one is committed to two theses that, if not uncontroversial, are probably acceptable to most people.

1. *Thesis of Moral Equality*: No competent adult has natural authority over any other.
2. *Social Space Thesis*: There are valuable forms of life that can be pursued within liberal institutions.

From the first commitment comes the liberal concern for consent and for the necessity of a set of rights that protect individuals from unwarranted interference. But one must also accept the more substantive social space thesis, which states that there is sufficient space within liberal institutions so that it is possible to develop and rationally pursue valuable forms of life. As we have seen, some people doubt that this second thesis is true, and some who doubt may be *justified* in doubting that it is true. We can call such people "true believers." The Amish, the Old Russian Believers, and other members of fragile communities may have reason to reject the social space thesis, since liberal institutions may undermine the values they hold dear. If members of these groups believe that their way of life is uniquely sanctioned by God, they will not believe that the alternative forms of life people can pursue in a liberal state are valuable; rather, they will view these alternatives as dangerous temptations that lead people away from "the one true path." Amish children

growing up in a liberal state are much more likely to reject the constitutive values that bind Amish communities together. This explains why members of such groups may reject and may be rational in their rejection of the fundamental rights liberals hold dear.

Such people will not be entirely reasonable in Rawls's special sense of that term, but as Rawls emphasizes, reasonable members of a liberal state must recognize the extent to which pluralism will flourish under free institutions. Such reasonable liberal citizens may have no reasons that will or rationally should persuade true believers that the exercise of political power in defense of liberal rights is justifiable. This may not imply that the exercise of coercive political power is wrong in such circumstances, at least where it is necessary to protect and enforce fundamental rights. But perhaps our attitude toward the enforcement of fundamental rights should be both firm and humble once we recognize that these rights may not be rationally justifiable to all.

If we cannot show that all rational persons have reason to support and uphold liberal institutions, we will have to rely on a more minimal account of the justification of liberal institutions. This is just what Rawls has done, in his more recent work, where liberal institutions are defended, not as uniquely rational, but as appropriate for and justifiable to a limited group of people whose values are reasonable in Rawls's special sense of that term. If the argument of this chapter is sound, Rawls has not gone far enough in qualifying the view expressed in *A Theory of Justice*. The liberal conception of legitimacy must also be revised to explain how it can be proper and justifiable to exercise political power when there are rational (though perhaps not entirely reasonable) illiberal minorities whose members have no good reason to endorse the constitutional essentials that govern the exercise of power.

Many critics are unsatisfied with the more qualified and limited argument Rawls offers in his later work. Some theorists who liked Rawls's earlier views seem to regard the argument of *Political Liberalism* as a case of morally criticizable backsliding. But if liberal institutions cannot be adequately defended in terms that all rational persons must accept, then Rawls was right to move toward a more modest account of political justification. Even when liberalism is defended in these more modest terms, most of us have good reason to promote and uphold institutions that protect fundamental rights. This more modest philosophical defense of liberalism may be the best available defense. And in the end, this more modest and less rationalist defense of liberal rights is enough. If arguments for a stricter and more traditional liberal rationalism fail, then they offer only false hopes for the justification of fundamental rights.

Notes

1. See Fehige (chapter 14 of this volume) for a preferentialist argument against Rawls's account of the value of rational revisability.
2. I do not mean to imply that the original position is unnecessary or that Rawls could

eliminate without cost these controversial elements of the conception of justice as fairness.

3. Notably the work of Norman Daniels (1996).

4. There is, of course, reason to question this account of the primary goods. On the one hand, one might question whether the specific goods Rawls identifies fit this condition (whether they are in fact all-purpose means). This tack is famously taken in Schwartz (1973). On the other hand, one may question whether all-purpose means can be described in terms of goods. This strategy has been productively pursued by Sen (1992), Nussbaum (1992, 1995), and Arneson (1989), among many others.

5. Will Kymlicka emphasizes this point in Kymlicka (1989).

6. See also Rawls (1993, 31).

7. In *Yoder*, the court ruled that it was permissible for the Amish to remove their children from school for the last years of high school. This was consistent with the judgment that it would violate the rights of children to deny them access to education *tout court*.

References

- Arneson, Richard. 1989. Equality and Equality of Opportunity for Welfare. *Philosophical Studies* 56: 77–93.
- Barry, Brian. 1973. *The Liberal Theory of Justice*. Oxford: Clarendon Press.
- . 1995. *Justice as Impartiality*. Oxford: Clarendon Press.
- Bell, Daniel, ed. 1993. *Communitarianism and Its Critics*. Oxford: Clarendon Press.
- Blackburn, Simon. 1984. *Spreading the Word*. Oxford: Clarendon Press.
- Buchanan, Allen. 1975. Revisability and Rational Choice. *Canadian Journal of Philosophy* 5: 395–408.
- . 1989. Assessing the Communitarian Critique of Liberalism. *Ethics* 99, no. 4: 852–82.
- Daniels, Norman. 1996. *Justice and Justification: Reflective Equilibrium in Theory and Practice*. New York: Cambridge University Press.
- Gibbard, Allan. 1990. *Wise Choices, Apt Feelings*. Cambridge, Mass.: Harvard University Press.
- Kant, Immanuel. 1797/1991. *The Metaphysics of Morals*. Translated by Mary Gregor. New York: Cambridge University Press.
- Kymlicka, Will. 1989. *Liberalism, Community, and Culture*. Oxford: Clarendon Press.
- . 1993. Some Questions about Justice and Community. In *Communitarianism and Its Critics*, edited by Daniel Bell. Oxford: Clarendon Press, 1993, 208–21.
- . 1996. *Multicultural Citizenship*. Oxford: Clarendon Press.
- Macedo, Stephen. 1990. *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism*. Oxford: Clarendon Press.
- MacIntyre, Alisdair. 1984. *After Virtue*. 2d ed. Notre Dame, Ind.: University of Notre Dame Press.
- Mill, John Stuart. 1859/1987. *On Liberty*. Indianapolis, Ind.: Hackett.
- Moore, Margaret. 1993. *Foundations of Liberalism*. Oxford: Clarendon Press.
- Murphy, Jeffrie G. 1995. Legal Moralism and Liberalism. *Arizona Law Review* 37 no. 1: 73–93.
- Nagel, Thomas. 1970. *The Possibility of Altruism*. Princeton, N.J.: Princeton University Press.
- . 1986. *The View from Nowhere*. New York: Oxford University Press.
- . 1997. *The Last Word*. New York: Oxford University Press.
- Narveson, Jan. 1988. *The Libertarian Idea*. Philadelphia: Temple University Press.
- Nussbaum, Martha. 1992. Human Functioning and Social Justice: In Defense of Aristotelian Essentialism. *Political Theory* 20: 202–46.

- . 1995. Human Capabilities, Female Human Beings. In *Women, Culture, and Development*, edited by Martha Nussbaum and Jonathan Glover. New York: Oxford University Press.
- Okin, Susan Moller. 1989. *Justice, Gender, and the Family*. New York: Basic Books.
- Parfit, Derek. 1973. Later Selves and Moral Principles. In *Philosophy and Personal Relations*, edited by Alan Montefiore. Montreal: Basic Books, 137–69.
- . 1984. *Reasons and Persons*. Oxford: Clarendon Press.
- Rawls, John. 1971. *A Theory of Justice*. Cambridge, Mass.: Belknap Press of Harvard University Press.
- . 1980. Kantian Constructivism and Moral Theory. *Journal of Philosophy* 77, no. 9: 515–72.
- . 1989. Justice as Fairness: A Briefer Restatement. Unpublished manuscript.
- . 1993. *Political Liberalism*. New York: Columbia University Press.
- Schwarz, Adina. 1973. Moral Neutrality and Primary Goods. *Ethics* 83: 294–307.
- Sen, Amartya. 1992. *Inequality Reexamined*. Cambridge, Mass.: Harvard University Press.
- . 1999. *Development as Freedom*. N.Y.: Knopf.
- Waldron, Jeremy. 1993. *Liberal Rights: Collected Papers 1981–1991*. New York: Cambridge University Press.
- Young, Iris. 1990. *Justice and the Politics of Difference*. Princeton, N.J.: Princeton University Press.

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EDITED BY

VICTORIA DAVION AND CLARK WOLF

ROWMAN & LITTLEFIELD PUBLISHERS, INC.
Lanham • Boulder • New York • Oxford

2000